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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,173	07/05/2007	Shinya Nagata	5553NA3-1	5331
62574	7590	03/02/2009	EXAMINER	
Jason H. Vick Sheridan Ross, PC Suite # 1200 1560 Broadway Denver, CO 80202			NATNITHADHA, NAVIN	
			ART UNIT	PAPER NUMBER
			3735	
			NOTIFICATION DATE	DELIVERY MODE
			03/02/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jvick@sheridanross.com

<i>Office Action Summary</i>	Application No. 10/599,173	Applicant(s) NAGATA ET AL.	
	Examiner NAVIN NATNITHITHADHA	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2008.  
2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 12, 14 and 16-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 12, 14 and 16-22 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 21 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Amendment*

1. According to the Amendment, filed 30 September 2008, the status of the claims is as follows:

Claims 12, 17, 18, and 22 are currently amended;

Claims 14, 16, and 19-21 are previously presented; and

Claims 1-11, 13, and 15 are cancelled.

2. The objection to claim 15 is WITHDRAWN in view of the Amendment, filed 30 September 2008.

3. The 35 U.S.C. 112, second paragraph, rejections to claims 15 and 16 are WITHDRAWN in view of the Amendment, filed 30 September 2008.

### *Response to Arguments*

4. Applicant's arguments, see Remarks, p. 7, filed 30 September 2008, with respect to the rejection of claims 12-15 under 35 U.S.C. 102(b) as being anticipated by Sackner et al, U.S. Patent No. 6,551,252 B1 ("Sackner"), have been fully considered, but are moot in view of the new ground(s) of rejection.

5. Applicant's arguments, see Remarks, pp. 7-8, filed 30 September 2008, with respect to the rejection of claims 16-18 and 22 under 35 U.S.C. 103(a) as being anticipated by Sackner in view of Leonhardt et al, U.S. Patent Application Publication No. 2004/0133123 A1 ("Leonhardt"), and Narimatsu et al, U.S. Patent No. 5,439,002 A

("Narimatsu"), have been fully considered, but are moot in view of the new ground(s) of rejection.

*Claim Objections*

6. Claim 16 is objected to because of the following informalities: In line 9, the words "measuring sensors detecting..." is grammatically incorrect. Appropriate correction is required.

*Claim Rejections - 35 USC § 103*

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 12, 14, and 16-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornn et al, U.S. Patent No. 5,348,008 A ("Bornn"), in view of Whitmore et al, U.S. Patent No. 3,268,845 A ("Whitmore").

Claims 12, 14, and 16-21: Bornn teaches the following:

A garment 1000 connectable to respiratory information analysis device for measuring biological information formed of a nonconductive material having elasticity so as to fit on the upper body of an examinee, and a computer readable medium recording program for performing a computer as a cardiogram analysis device (see figs. 1A, 3A, and 3B),

the garment being characterized in having a plurality of respiratory information measuring sensors 14 and 16, each of said sensors 14 and 16 including a conductive

member 26 varying its electric resistance according to variation of constitution of the examinee through breathing thereof under a turning-on-electricity state and capable of delivering electric information based on the variation of electric potential to a respiratory information analysis device 1000A (see col. 9, ll. 38-64), which includes an electric information acquisition means 1036, electric information comparison means (see col. 25, ll. 8-40), electric information selection means (see col. 25, ll. 8-40), respiratory information analysis means 1006, and respiratory information output means 1060;

wherein:

a portion 14 of the plurality of respiratory information measuring sensors are disposed at a perimeter of a chest region and another portion 16 of the plurality of respiratory information measuring sensors are disposed at a perimeter of an abdominal region of the garment (see col. 8, ll. 53-66),

the conductive member 26 of each of the respective plurality of respiratory information measuring sensors is arranged at either a position winding around a chest region of the examinee and a position winding around an abdominal region of the examinee (see fig. 1A), and

the respiratory information analysis device 1000A selects at least one output of at least one sensor in the chest region and at least one output of at least one sensor in the abdominal region (see col. 25, ll. 8-40);

wherein for the respiratory information measuring sensor 14 and 16, electric influence under a turning-on-electricity state to the examinee is decreased by covering a

surface of the conductive member facing the body surface of the examinee and an opposed surface thereof with a nonconductive material (see col. 8, l. 53, to col. 9, l. 25);

wherein the respiratory information analysis means further acquires information on a variation cycle of the electric information and information on an R-wave height cycle related to a variation cycle of R-wave height information of cardiogram based on electric potentials acquired from a cardiogram electrode and selects cycle information of either one and analyzes respiratory information in accordance with the selected cycle information (see col. 28, l. 16, to col. 30, l. 59);

wherein the respiratory information analysis means further acquires information on amplitude of the electric information and information on R-wave height amplitude related to amplitude of the R-wave height information and selects one of the electric information and the R-wave height information in accordance with comparison of the electric information and the R-wave height information and analyzes respiratory information in accordance with the selected cycle information (see col. 28, l. 16, to col. 30, l. 59);

wherein further the respiratory information analysis means display one of a position of the cardiogram electrode and a position of the respiratory information measuring sensor detecting the selected information correspondingly with one of a diagram of the biological information measuring garment and a diagram of the examinee's body (see col. 28, l. 16, to col. 30, l. 59).

Bornn does not teach explicitly the "electric resistance of the plurality respiratory information measuring sensors varies with expansion and contraction of one of the

length and cross-section of the conductive member in response to the examinee's breathing". However, Whitmore teaches a reparatory information measuring sensor (see figs. 1 and 2), wherein the electric resistance of the plurality respiratory information measuring sensors varies with expansion and contraction of one of the length and cross-section of the conductive member in response to the examinee's breathing (see col. 1, l. 11, to col. 2, l. 14). Thus, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Bornn's respiratory measuring sensors 14 and 16 to Whitmore's respiratory measuring sensor in order to "provide a mechano-electric transducer that is small, rugged, economical, and easy to construct" (see Whitmore, col. 1, ll. 63-65).

Claim 22: Because the subject matter of claim 22 is directed to a method that is not distinct from the subject matter of claim 17 directed to a respiratory information analysis device, Bornn in view of Whitmore teaches claim 22 for the same reasons as that provided for the rejection of claim 17 above.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The other patents cited in the PTO-892 teach subject matter related to the Applicant's claims. The Examiner suggests reviewing these patents before responding to the present Office Action.

9. Applicant's amendment, filed on 30 September 2008, necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NAVIN NATNITHITHADHA whose telephone number is (571)272-4732. The examiner can normally be reached on Monday-Friday, 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles A. Marmor, II/  
Supervisory Patent Examiner  
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Patent Examiner, Art Unit 3735  
02/23/2009